



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 20, 1998

Ms. Marva M. Gay  
Assistant County Attorney  
Harris County  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002-1700

OR98-2457

Dear Ms. Gay:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 118884.

The Harris County Medical Examiner (the "medical examiner") received a request for "copies of all toxicology, lab reports and all photographs—both scene and autopsy—relating to Case No. 98-1952." You state that the medical examiner has provided the requestor with "a copy of the written post-mortem report and the requested toxicology and lab reports." You contend that the investigative and post-mortem photographs are excepted from disclosure under sections 552.103 and 552.108 of the Government Code.

Initially, we note that the act's exceptions do not, as a general rule, apply to information made public by other statutes. Open Records Decision No. 525 (1989). Section 11 of article 49.25 of the Code of Criminal Procedure makes all of the medical examiner's records of an autopsy public, including any post-mortem photographs. Open Records Letter No. 98-2338 (1998). Therefore, the medical examiner must release copies of the post-mortem photographs to the requestor.

We will address your arguments against disclosure of the investigative photographs. Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." This office has held that section 552.108 may be invoked by any proper custodian of information relevant to an incident involving allegedly criminal conduct that is still under active investigation or prosecution. Open Records Decisions No. 474 (1987). The medical examiner is a proper custodian of the investigative photographs. In this case, the Harris County District Attorney's Office has asked the medical

examiner to withhold the investigative photographs from disclosure. In an affidavit submitted to this office, an Assistant District Attorney states that the investigative photographs relate to a pending criminal investigation and anticipated prosecution. Based upon this affidavit, we conclude that the release of the investigative photographs would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we find that the medical examiner may withhold the investigative photographs from disclosure under section 552.108(a)(1).

Because we are able to resolve this matter under section 552.108, we need not address your other arguments against disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 118884

Enclosures: Submitted photographs

cc: Mr. Paul Nugent  
Foreman, DeGeurin, Nugent & Gerger  
909 Fannin, Suite 590  
Houston, Texas 77010  
(w/o enclosures)